

ESTATES OF LEAN WOMAN (SANKEY) : Order Docketing Appeals and Affirming  
 and OLD WOMAN (MURPHY) : Decision  
 :  
 : Docket Nos. IBIA 00-69  
 : IBIA 00-70  
 :  
 : May 18, 2000

Appellant Richard Charles Hassell seeks review of an order dismissing petition for reopening in the estates of Lean Woman (Sankey) and Old Woman (Murphy) which was issued by Administrative Law Judge Richard L. Reeh on March 9, 2000. Appellant filed separate notices of appeal for each estate. The appeals have been assigned Docket Nos. IBIA 00-69 (Lean Woman (Sankey)) and IBIA 00-70 (Old Woman (Murphy)). For the reasons discussed below, the Board of Indian Appeals (Board) affirms Judge Reeh's decision.

Judge Reeh's order states:

An Order Approving Will and Decreeing Distribution was entered in the Estate of Lean Woman (Sankey) on September 13, 1957 by Examiner of Inheritance J.R. Graves. An Order Determining Heirs \* \* \* was entered in the Estate of Old Woman (Murphy) by Examiner Graves on January 31, 1958.

Examiner Graves determined that Old Woman \* \* \* was Lean Woman's \* \* \* sole heir-at-law, but that Lean Woman's will dated March 10, 1951 should be approved. His determination was appealed by a niece, Anna Zelma Mendez (Anna). On appeal, Examiner Graves' decision was affirmed. See Estate of Lean Woman (Sankey), IA-886 (September 13, 1957). After testimony by Anna and others, Examiner Graves later determined that Old Woman \* \* \* was survived by her spouse, Earl Whiteshirt, and two children, namely: Richard Murphy (Richard) and Anna. Old Woman's estate was ordered distributed in equal shares to the three.

On September 2, 1999, more than forty years later, a Petition for Reopening was received from Richard Charles Hassell (Mr. Hassell) who complains that the probate files reflect that Earl Whiteshirt appears to have been

married to both Old Woman \* \* \* and Lean Woman \* \* \* at the same time. He also complains that Lean Woman's will should not have been approved for a variety of reasons.

Documents submitted by Mr. Hassell demonstrate that he does not claim to be one of either decedent's heirs-at-law. Moreover, he does not claim to be a beneficiary of any will made by either decedent. (The record is devoid of evidence which suggests that Old Woman ever made a will.) Rather, Mr. Hassell is a distant relative of Anna's, and he was the sole beneficiary of Anna's will. See Estate of Anna Murphy, IP OK 54 P 83, issued May 17, 1983 by [Administrative Law Judge] Sam E. Taylor.

In order to have standing to Petition for Reopening, an individual must be a presumptive heir, a Beneficiary or a person asserting a claim against the estate. See Estate of [Ethel] Edith Wood Ring Janis, 15 IBIA 216 (1987). Neither Richard nor Anna petitioned for Rehearing the Estate of Old Woman. (In fact, Anna testified that Richard [sic, probably should be Earl] was Old Woman's husband at the time of her death.) Mr. Hassell has no standing to do so in either's place.

This Petition must be denied because Mr. Hassell lacks standing.

On appeal, Appellant states that he is the nephew of Anna Murphy, who was the only daughter of Old Woman. (Judge Reeh's order, however, shows that Anna was neither Old Woman's only child, nor her only heir.)

In the Discussion submitted with his appeal in Lean Woman's estate, Appellant asserts that as Anna's sole beneficiary, he has an interest in Lean Woman's estate because if her will were disapproved, her entire estate would pass by intestacy to her sister, Old Woman, then to Anna's estate, and finally to him.

In the Discussion submitted with his appeal in Old Woman's estate, Appellant argues that he has an interest in the estate because Earl, who was found to be Old Woman's surviving spouse, should be disqualified from inheriting. Appellant contends that once Earl is disqualified, the interest which originally passed to Earl would instead pass to Anna's estate, and then to him.

It is clear that Appellant did not have standing when Lean Woman's and Old Woman's estates were probated. In 1957 and 1958, when the estates were probated, Anna, the person through whom Appellant claims standing, was living, as is evidenced by her participation in both probate proceedings. Accordingly, Appellant was not a presumptive or actual heir of either decedent. See Estate of Ethel Edith Wood Ring Janis.

Appellant derives his interest in the estates entirely through Anna. Therefore, his standing is also derivative; i.e., his standing is the same as Anna's would have been. See Estate of Little Snake (John Smith), 24 IBIA 121 (1993). Anna participated in both probate proceedings as is evidenced by her appeal in Lean Woman's estate and her testimony in Old Woman's estate. Because she participated in both probate proceedings, she lacked standing to seek reopening of either estate. See 43 C.F.R. § 4.242(a) and (h) (both requiring that a person seeking reopening have had no notice of the original hearing). Compare 25 C.F.R. § 15.18 (1958) (which also required that a person seeking reopening have had no notice of the original hearing and which further required that all such petitions be filed within 3 years from the date of the original decision). Because Appellant's standing derives from Anna's, he also lacks standing to petition for reopening.

Although not discussed by Judge Reeh, it appears possible that Appellant's petition for reopening could have been denied for the additional reason that Appellant failed to pursue his claim with due diligence. See, e.g., Estates of Newton McNeer and Nancy McNeer, 33 IBIA 318 (1999); Estate of Woody Albert, 14 IBIA 223 (1986). Appellant's interest in the estates of both Lean Woman and Old Woman dates from 1983, when he was found to be Anna's sole beneficiary. However, nothing in the materials before the Board shows that Appellant has explained the lapse of more than 16 years between the probate of Anna's estate and his filing of the present petition for reopening.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, these appeals are docketed, and Judge Reeh's March 9, 2000, decision is affirmed.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge